



INTERIOR BOARD OF INDIAN APPEALS

Harold Jones v. Acting Sacramento Area Director, Bureau of Indian Affairs

13 IBIA 124 (02/27/1985)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

HAROLD JONES

v.

ACTING AREA DIRECTOR, SACRAMENTO AREA OFFICE,
BUREAU OF INDIAN AFFAIRS

IBIA 84-27-A

Decided February 27, 1985

Appeal from a decision of the Acting Area Director, Sacramento Area Office, Bureau of Indian Affairs, finding that appellant was not eligible to receive a fishing identification card in order to exercise Indian fishing rights on the Hoopa Valley Indian Reservation, California.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Regulations: Validity

The Board of Indian Appeals does not have authority to change a duly promulgated regulation of the Department or to declare it to be invalid.

APPEARANCES: Marilyn B. Miles, Esq., Eureka, California, for appellant; David C. Etheridge, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

On April 27, 1984, the Board of Indian Appeals (Board) received a notice of appeal from Harold Jones (appellant). Appellant sought review of a March 9, 1982, decision of the Acting Area Director, Sacramento Area Office, Bureau of Indian Affairs (BIA) (appellee), refusing to issue him a fishing identification card that would have permitted him to exercise Indian fishing rights on the Hoopa Valley Indian Reservation, California. Appellee's decision, which affirmed a January 27, 1982, decision of the Acting Superintendent of the Northern California Agency, BIA, was based on the determination that appellant did not meet the eligibility criteria for an identification card set forth in 25 CFR 250.5. Appellant sought Board review under 25 CFR 2.19 when his appeal of appellee's decision to the Deputy Assistant Secretary--Indian Affairs (Operations) (Deputy Assistant Secretary) had been pending for more than 30 days without decision. For the reasons discussed below, the Board affirms that decision.

Discussion and Conclusions

On appeal, appellant raises the same arguments that were considered below. Specifically, appellant does not question the decision that he does not fall within any of the categories of persons made eligible to exercise Indian fishing rights on the Hoopa Valley Reservation under 25 CFR 250.5. ^{1/} Instead, appellant argues that the classifications set forth in that regulation are arbitrary, irrational, and violative of his due process rights. He contends that he can trace his ancestry to Tolowa, Wiyot, and Yurok Indians who were settled on the Hoopa Valley Reservation and who to the present day have maintained a close connection to the reservation and that therefore he should be eligible to receive a fishing identification card as an "Indian of the Reservation."

[1] Throughout this matter, appellant has sought a change in Departmental regulations. At one time, the Deputy Assistant Secretary believed that amendments might be made to the regulations that would render this case moot. Changes to Part 250 were published in 48 FR 41760 (Sept. 19, 1983). However, no changes were made to the eligibility requirements in section 250.5(a). The preamble to the September 1983 amendments states in note 2 that during the public comment period comments were received suggesting changes to, among other things, the eligibility requirements of section 250.5(a). These comments were not accepted because the proposed amendments had not been available for public comment. Although the note further states that some of the suggestions made might be the subject of future proposed changes to Part 250, the Board is not aware of any subsequent proposed or final changes to the eligibility requirements of section 250.5(a). The Board lacks authority to change the existing duly promulgated Departmental regulations or to declare them to be invalid. See, e.g., Transwestern Pipeline Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 49, 90 I.D. 474 (1983); Zarr v. Acting Deputy Director, Office of Indian Education Programs, 11 IBIA 174, 90 I.D. 172 (1983).

Because appellant admits that he does not qualify for a fishing identification card under existing Departmental regulations and because the Board itself lacks the authority to invalidate or avoid application of such regulations, of necessity the Board must affirm the decision of appellee denying, in accordance with such regulations, appellant's request for a fishing identification card.

^{1/} Section 250.5 states in relevant part:

"(a) The following persons may exercise fishing rights under the authority of this part:

"(1) Enrolled members of the Hoopa Valley Tribe.

"(2) Plaintiffs in the case entitled Jessie Short et al. v. United States, Ct. Cls. No. 102-63, and

"(3) Persons who are allottees or direct descendants of allottees on the Hoopa Valley Indian Reservation, who currently and for eight (8) of the past ten (10) years have resided on the Reservation or within 60 miles thereof."

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the March 9, 1982, decision of the Acting Sacramento Area Director denying appellant's request for a fishing identification card is affirmed.

//original signed
Jerry Muskrat
Administrative Judge

We concur:

//original signed
Bernard V. Parrette
Chief Administrative Judge

//original signed
Anne Poindexter Lewis
Administrative Judge